



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

JRE

Docket No: 4289-98

9 May 2000



Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 27 April 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by a designee of the Specialty Leader for Psychiatry dated 18 February 2000, a copy of which is attached, and your rebuttal thereto.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the advisory opinion concerning your claimed mental disorder. The Board did not reconsider your request for disability retirement for any other conditions, because you did not submit any new material evidence not considered by the Board when it denied your original application on 6 February 1992.

In view of the foregoing, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official

records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure

NAVAL MEDICAL CENTER, SAN DIEGO, CALIFORNIA

18 FEB 00

FROM: MATTHEW F CARROLL LCDR MC USNR
DEPARTMENT OF MENTAL HEALTH

TO: CHAIRMAN, BOARD FOR CORRECTIONS OF NAVAL RECORDS

SUBJECT: COMMENTS AND RECOMMENDATIONS IN THE CASE OF FORMER
[REDACTED]

REF: "A" DOCKET #4289-99

ENCLOSURES:

1. BCNR file
2. Service record
3. VA record/medical record
- 4.

Reference "A" requested a psychiatric review of the Petitioner's request for a change in his record. The Petitioner contends that he was unfit for duty by reason of a physical disability when he was released from active duty in the Marine Corps on 3/17/89. I have reviewed the complete records that I have been sent and I will comment on the specific records that are pertinent in this case, involving any potential psychiatric problems.

1. [REDACTED] was seen on 6/25/86 by J H Walker, MD. This note stated "psych eval at request of Command." In this evaluation, it was noted that LCPL Dale was alert and cooperative. He denied hallucinations, either auditory or visual. There were no annoying mannerisms noted, and LCPL Dale had good eye contact. There were no recent memory difficulties and he had no suicidal or homicidal ideations. The overall impression was "normal exam." The only other note regarding this incident stated that [REDACTED] was referred by MSGT Boyles for psychological evaluation.

2. There are no other medical records from the United States Marine Corps that suggest in any way, that [REDACTED] was suffering from a psychological or psychiatric disorder. Mr. [REDACTED] in his request to change the records, has claimed that there were records that were lost, that would have supported his claim. However, there are no ancillary records to suggest in any way, that he had been diagnosed with bipolar disorder, schizophrenia, schizoaffective disorder, or manic depression.

3. In further review of [REDACTED] records, I have a note from 10/17/90. I believe this is from the Veteran's Administration Hospital; however, the actual clinic name is not noted on this paper. This note was written by an MD, whose name appears to be Stross. In this note it states, "diagnostically, he appears to be a decompensated sociopathic personality disorder, now showing a paranoid state that may be the beginning of a schizophrenic rage, or reflective of a borderline personality disorder with sociopathic and paranoid features."

4. A note from 10/17/90, signed by Anna Stanton, LCSW, diagnoses [REDACTED] with borderline personality disorder, decompensating.

5. A further note from his VA records dated 4/29/91, signed by Dr. Stross, diagnoses [REDACTED] with schizophrenic disorder, paranoid.

6. Notes on 6/7/91 reveal, by Dr. Elwood, PhD, "likes to drink beer." A further note on the same day, by Dr. Stross, states "vet asks for Valium or Xanax."

7. A report from the Department of Labor, Division of Disability Determinations, signed by Edward Black, MD, diagnoses [REDACTED] with paranoid schizophrenia.

8. A rating decision from the Veteran's Administration dated 10/3/91 notes "service connection is denied for the veteran's paranoid schizophrenia, since no nervous condition was shown in Service, and no psychosis was shown until 1991...."

9. A report by John Bjornson, MD, dated 11/29/91, diagnoses Mr. Dale with schizoaffective disorder, in partial remission.

10. A medical certificate signed by Dr. Stross, dated 10/23/91, diagnoses [REDACTED] with "rule out personality disorder, rule out somatization disorder, rule out compensation neurosis."

11. Another report by Dr. Bjornson dated 10/28/91, notes that Mr. [REDACTED] is not taking antipsychotic medication. This report also notes that Mr. Dale insists that his Service-connected disability began when he was in the Marine Corps from 1985 until 1989. In this report, [REDACTED] told Dr. Bjornson that he had a psychiatric condition as early as 1985, which he described as paranoia. Additionally in this report, [REDACTED] states that part of his problems in the Marine Corps related to his being in civilian jail for some type of physical altercation with a girl. Dr. Bjornson diagnoses [REDACTED] with schizophrenia, paranoid type.

12. A note dated 12/28/91 by [REDACTED]'s wife. In this, she states, "I met my husband while he was on active duty. I noticed that he had trouble controlling his anger." Later on in the note, she notes, "we only knew each other two weeks in the Philippines, before we got married."

13. Another VA rating decision dated 3/13/92 states, "Service connection is continuing to be denied for the veteran's paranoid schizophrenia, since there is no nervous condition shown in Service, and no psychosis shown until 1991, which is more than one year subsequent to Service."

14. A statement in the case in [REDACTED] Appeal dated 3/31/92 reveals that in that their review of records, "Service medical records are negative for any treatment for a diagnosis of any nervous condition." They also refer to a Hearing on 12/26/91, where "veteran states that he did not request treatment except on one occasion, when the records were lost." They then refer to

other letters and statements where they note, "the veteran stated that he was going through some real rough times and he almost got into some serious trouble." They go on, referring to him stating that he has trouble controlling his rage and anger. The ultimate decision states, "Service connection is not warranted for the veteran's nervous condition." They state in this report, "the veteran's nervous condition did not manifest itself in Service, nor during the regulatory presentative period following Service. There was no evidence of any complaints prior to 9/90; psychosis was not diagnosed until 1991. Therefore, Service connection is not warranted."

15. This is from a report from the Counseling Program, Pennsylvania Hospital, dated 10/23/92. In this report, they wrote that [REDACTED] "feels emotional problems due to service in Marines. He was diagnosed with bipolar disorder."

16. A letter dated 1/21/93, by Ann Steel, MD, states that Mr. [REDACTED] diagnosis is "bipolar disorder."

17. A Memorandum of the Department of Veterans Affairs dated 9/7/93 again notes, in their review of records, that there was a normal mental status examination in 6/86. They also noted that nothing abnormal was mentioned on the 1/89 separation exam. This report, by Dr Caffey MD, also states that [REDACTED]'s problems appear primarily to indicate a personality disorder.

18. The next item I have reviewed is not dated in my records here. This is a Hearing in [REDACTED]'s Appeal case, where Mr. [REDACTED] appeared in person. In this Appeal, [REDACTED] mentions that he feels that he was pushed harder than other people in boot camp. He said that MSGT Boyles tried to get him forced out of the Service and sent him for psychological evaluation because he was not functioning with other people. He says that he was put in jail twice for battery on his girlfriend, and that he could not control his rage. [REDACTED] makes the claim that he was diagnosed with borderline personality disorder intentionally, and that they waited to give him a primary diagnosis because they knew that he had a claim from the Veterans Administration. He said that the physicians in Delaware conspired to keep him from getting a Service-connected psychiatric disorder.

In this evaluation, [REDACTED] said that he did not have any other psychiatric evaluations than the 6/86 exam. He stated that his problem was his rage and anger. Only after being directly asked, did [REDACTED] say that he had heard voices when he was in the Service, telling him to strike someone. When he was asked if he actually experienced auditory hallucinations in the Service, telling him to strike someone, he said "yes." He then went on, stating that he tended to give his wife direct orders and that this was due to his service in the Marine Corps.

19. A report from Dr. Bjornson dated 7/12/94. In this report, Dr. Bjornson diagnoses Mr. Dale with probable schizophrenia, schizoaffective type, with hypomanic features and a probable underlying mixed personality disorder.

20. This is a psychological evaluation dated 9/2/94, signed by Thomas Bundick MS, Mary Spiers PhD, and Allen Harkavy PhD. In this report of psychological testing, they note [REDACTED]'s test results and history depict a man who has strong paranoid ideations, a slightly lucid reality guise, and a tendency towards strong emotional outbursts when angry." They go on to say "however, [REDACTED]'s test performance did not indicate the presence of acute psychotic thought disturbances, nor were there paranoid ideations expressed during the clinical interview unrealistic enough to suggest an ongoing schizophrenic delusion." [REDACTED] paranoid ideations appear to be superimposed upon a characterological disturbance. He demonstrated a strong narcissistic propensity with features of antisocial thinking as well."

21. A notice of proposed removal from 8/12/94 from the United States Post Office, lists the following charges of improper conduct from [REDACTED]. The first says that he had a confrontation with another coworker and asked the coworker if he would "like to settle this now or go outside." He threatened another mail-handler, saying "I'll blow your fucking brains out." He yelled at another employee, "fuck you" and "nigger". He said at one point, with a supervisor, that he refused to come to work and did not care if he was AWOL, and he had a confrontation over a chair with another employee.

22. Again, a Decision of Board of VA Psychiatrists, dated 9/30/94, from the Department of Veterans Affairs in Philadelphia, Pennsylvania, gives [REDACTED] a diagnosis of a severe characterological disorder, borderline personality disorder, and paranoid personality disorder. This is signed by two Psychiatrists, Bahman S. Sholevar, MD, and Benjamin Williams, MD.

23. A Compensation and Pension Exam report by Dr. Lawrence Elwood, PhD, dated 4/3/97, states "It appears that the patient's anxiety, depression, suspiciousness, excitement and hostility began during the Marine Corps and were observed by his wife and Psychiatric examiners soon after discharge from the Military Service. These same symptoms, along with manic behavior and paranoid delusions persisted in his job at the Post Office and have been seen as recently as this evaluation. Therefore, it appears to this examiner, that the patient's psychotic condition" and then he has, "schizophrenia with hypermanic features, is as likely as not to have begun during his Military Service."

24. A rating decision from the Department of Veterans Affairs dated 9/4/97, states "Service-connected for schizophrenia, paranoid, has been established as directly related to Military Service." It goes on to say, "the current VA examination indicates the veteran suffers from paranoid schizophrenia, which the examiner feels began exhibiting symptoms of anxiety/depression, suspiciousness, excitement and hostility during Service." In this rating decision, they note that the Petitioner had recently battered his wife and that his wife had a Restraining Order on him, and that he went to jail for this.

25. In a State of New Jersey, Department of Labor, Division of

Disability Determination Services, signed by a Louis Alban, PhD, dated 11/15/97, in this it states that "the Claimant said that he hears two voices (God's voice and the devil) often arguing in his head." It then states that "his delusions appear to be persecutorily primary." He is then diagnosed as "schizoaffective disorder, bipolar type."

OPINION:

It is my opinion, with reasonable medical certainty, that Michael ██████ was not unfit for duty by reason of physical disability when released from active duty in the Marine Corps on 3/17/89. This opinion applies only to psychiatric disabilities. The following evidence supports this opinion:

1. ██████ has made the claim that he was suffering from a psychiatric disorder in 6/86. However, his record states that he had a normal exam.
2. ██████ has made the claim that records showing that he had a psychiatric disability were lost. There is no evidence that this is true. He did not report this on his discharge physical.
3. ██████ never sought psychiatric treatment while on active duty.
4. At no time did ██████ make any mention of hearing voices or having visual hallucinations while he was on active duty. He made these claims only after being released from active duty.
5. Dr. Elwood notes in his 1997 report of April 3, that Mr. ██████ anxiety/depression, suspiciousness, excitement and hostility began in the Marine Corps and were observed by his wife and Psychiatric examiners seen after discharge from the Military Service. This is not correct. ██████ wife stated that she met ██████ while he was in the Marine Corps. She refers to him having severe anger problems. Additionally, Psychiatric examiners did not notice that ██████ suffered from any condition suggestive of schizophrenia immediately following his discharge from the Marine Corps. Rather, ██████ exhibited symptoms indicative of a personality disorder.
6. ██████'s records do not support the definitive diagnosis of his having a Schizophrenic disorder at all. He has carried many different diagnoses, which may or may not be a psychotic disorder. In my opinion the evidence weighs more to ██████ suffering from a severe personality disorder, and not a Schizophrenic disorder.

SUMMARY:

In summary, it is my opinion, with reasonable medical certainty, that there is no evidence to suggest that ██████ was unfit for duty by reason of physical disability (psychiatric) when released from active duty in the Marine Corps on 3/17/89.

It is my opinion that his claim should be denied and that the Department of Veterans Affairs has made an error in awarding him a service connected disability rating for Schizophrenia.

MATTHEW F CARROLL LCDR MC USNR

